REMARKS

Applicants have studied the final Office Action dated March 22, 2005. The Applicants assert that their declaration under 37 C.F. R. §1.131 that was submitted in their last response dated October 4, 2004, was not addressed or considered in this current Office Action, and that the finality of this Office Action should be withdrawn.

Further, the Applicants respectfully request entry of these remarks under the provisions of 37 C.F.R. § 1.116(a) in that the remarks below place the application and claims in condition for allowance, which allowance is respectfully requested. Claims 1 - 18 are pending. Reconsideration and allowance of the claims in view of the following remarks are respectfully requested.

Inventors Declaration under 37 C. F. R. §1.131 was not Addressed

As an initial matter, the Applicants point out that a declaration under 37 C. F. R. §1.131 was submitted in the Applicants' last response. Response under 37 C. F. R. §1.111 dated October 4, 2004. The Applicants note that the PAIRS fails to reflect that this declaration was received by the U. S. Patent and Trademark Office (hereinafter "the Office") or entered into the file for this application. The Applicants further note that the Examiner failed to acknowledge or discuss this declaration in the Office Action dated March 22, 2005.

The Applicants are attaching a copy of this declaration to this response. As proof of submission and receipt of this declaration, the Applicants are also submitting the "Auto-Reply Facsimile Transmission" sheet received from the Office, a copy of the first page of transmittal sheet, i.e., the "TELECOPIER TRANSMITTAL FORM," that was retrieved from the PAIRS, a copy of the "TRANSMISSION VERIFICATION REPORT" produced by the Applicants facsimile machine upon sending the response, and a copy of the 27 pages of the previously submitted office action response. The Applicants point out that the "Auto-

Reply Facsimile Transmission" sheet received from the Office indicates that the "Total Pages" has a count of 27 total pages. The Applicants further point out that the copy of the first page of transmittal sheet retrieved from the PAIRS indicates that this is page 01/27, i.e., page 1 of 27 total pages. Further, the "TRANSMISSION VERIFICATION REPORT" produced by the Applicants facsimile machine indicates that a total of 27 pages were sent and received with a result of "OK., and a copy of the 27 pages of the previously submitted office action response. Applicants respectfully assert that the lack of consideration of this declaration requires withdrawal of the finality of the current office action, entry of these remarks, and re-examination and reconsideration of the subject patent application in light of these remarks and the Applicants' declaration under 37 C.F.R. 1.131.

Office Action was Improperly made Final

Furthermore, the Examiner made the Office Action final based on a new ground of rejection not stated in the earlier Office Action. Applicants respectfully traverse this decision. In the Final Office Action, the Examiner rejects the present claims by citing Welles II et al. (U.S. Patent No. 6,532,495), in view of Yao et al. (U.S. 5938,734), and Huizer et al (U.S. Patent No. 6,751,802). The Applicants respectfully point out that both the Yao reference and the Huizer reference were not cited in any the previous Office Action.

According to MPEP § 706.07(a): "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection not necessitated by amendment of the application by applicant, whether or not the prior art is already of record." In the previous Office Action dated June 4, 2004, the Examiner rejected claims 1, 3-4, 11, 13-14, 16 and 18 under 35 U.S.C.§ 103(a) as being unpatentable over Welles, II et al (U.S. Patent No. 6,532,495), in view of Ravi (U.S. Patent No. 6,292,834). Also in this previous office action the Examiner rejected claims 5, 10 and 15 under 35 U.S.C.§ 103(a) as being unpatentable over Gupta in view of Welles, rejected claims 6, 8-9, and 17 as being unpatentable over Gupta, Welles, and Ravi, rejected claims 2, and 12 as being unpatentable over Welles

in view of Ravi in further view of Birk et al. (U.S. Patent No. 6,502,139). In the previously-filed amendment, the Applicants provided remarks to memorialize and expand upon a telephone interview between the Examiner and the Applicants that distinguished the then pending claims over the Ravi reference and explained the inapplicability of the Ravi reference to the then pending claim. The Applicants also amended the independent claims 1, 6, and 11 to specify that, as in the example of claim 1, "the indicated data speed is less than the data rate of the data link and less than the data rate capacity of the requesting computer." This amendment replaced "server" with "requesting computer." The Applicants did not switch from one subject matter to another or resort to any subterfuge to keep the application pending.[1] Thus it is respectfully submitted that the final status of the Office Action is premature and should be withdrawn.

If the Examiner does not withdraw the final status of the Office Action, Applicants submit that this response does not raise new issues in the application. It is submitted that the present response places the application in condition for allowance or, at least, presents the application in better form for appeal. Entry of the present response is therefore respectfully requested.

(2-3) Rejected claims 1-18, under 35 U.S.C. 112, first paragraph.

(4-5) Rejected claims 1, 3-4, 11, 13-14, 16, and 18, and further discussed disclosures of cited references for claims 2, 6, 7, 8, 9, 12 and 17, under 35 U.S.C. § 103(a) as being unpatentable over Welles, II et al (U.S. Patent No. 6,532,495) in view of Yao et al. (U.S. Patent No. 5,938,734).

(6) Rejected claims 5, 10 and 15 under 35 U.S.C. § 103(a) as being unpatentable over Welles (U.S. Patent No. 6,532,495) in view of Huizer et al (U.S. Patent No. 6,751,802).

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[1] See MPEP § 706.07.

The Applicants respectfully submit that the Examiner's rejections under 35 U.S.C. §112 and 35 U.S.C. §103 (a) were improper and have been overcome based on the following remarks.

Inventors Declaration under 37 C. F. R. §1.131 was not Addressed

The Applicants point out that a declaration under 37 C. F. R. §1.131 was submitted in the Applicants' last response. Response under 37 C. F. R. §1.111 dated October 4, 2004. The Applicants note that the Examiner failed to acknowledge or discuss this declaration in the Office Action dated March 22, 2005. The Applicants have attached a copy of this declaration to this response. The Applicants respectfully assert that this omission by the Examiner requires withdrawal of the finality of the current office action, entry of these remarks, and re-examination and reconsideration of the subject patent application in light of these remarks.

Rejection under 35 U.S.C. §112 First Paragraph

The Examiner rejected claims 1-18 under 35 U.S.C. 112, first paragraph by asserting that the limitation "the indicated speed or the input speed being less than the data rate of the data link and less than the data rate capacity of the requesting computer" was not sufficiently supported in the Applicants' specification. Office Action dated March 22, 2005, page 2. Section 3, last paragraph of page 2. The Applicants traverse this assertion. As noted in the MPEP, "If a skilled artisan would have understood the inventor to be in possession of the claimed invention at the time of filing, even if every nuance of the claims is not explicitly described in the specification, then the adequate description requirement is met." MPEP §2163 (II)(A)(3)(a), referring to *Vas-Cath*, 935 F.2d at 1563, 19 USPQ2d at 1116; *Martin v. Johnson*, 454 F.2d 746, 751, 172 USPQ 391, 395 (CCPA 1972) (stating "the description need not be in *ipsis verbis* [i.e., "in the same words"] to be sufficient").

With regards to specifying that the indicated speed "is less than the data rate of the data link," the Applicants refer to the portion of the specification that defines the "set

speed" at page 10, lines 1-4. This portion of the specification defines the "set speed" to be the "data link speed" times the fraction "SI/(SI+FI)" where SI is the second interval length and FI is the first interval length. *Id.* The Applicants assert that a practitioner of ordinary skill in the art would recognize that this fraction is less than one since the denominator contains the numerator with an additional quantity added thereto. Such a practitioner would also realize that these interval lengths are all positive numbers, thereby ensuring that this fraction is less than one. Further, the specification specifically discusses a second data transfer made as a result of a second data request made from a client computer. Specification, page 6, line 25 through page 7, line 3. This portion of the specification notes that the second data transfer is made possible by limiting the rate of the first transmission. This portion of the specification notes that if the rate of the first transmission were not limited, the bandwidth of the link and the computing resources of the client computer would have been used for the first transmission and not available for the second transmission. Further, the "client computer" is described in this context as the computer from which the data request and speed indicating signal were received. Specification, page 5, lines 21-24. The Applicants assert that a skilled artisan would understand, based on this portion of the specification, that the indicated speed, which results in the limitation of the rate of transmission as defined by the independent claims, is less than the data rate of the data link.

With regards to a description that the indicated speed is less than the data rate capacity of the requesting computer, the Applicants refer to the same section of the specification and note that this section describes that computing resources of the client computer are available for a second data transfer due to the limiting of the transmission rate for the first data transfer. Specification, page 6, line 27 through page 7, line 3.

With regards to a description of an average rate of transmission, the Applicants refer to the specification, page 9, line 17 through page 10, line 4. This portion of the specification describes "a periodic schedule comprising two intervals in each cycle. " Specification, page 9, lines 17-18., two sequential periods are described. The first interval

in each cycle is described has having no transmitted data and the second interval is described as having data transmitted. Specification, page 9, lines 18-24. The "set speed" is defined as the data link speed multiplied by the interval in which data is transmitted divided by the sum of these two intervals. Specification, page 10, lines 1-4. The specification further describes that choosing these two intervals relates to setting the data link speed. Specification, page 9, lines 24–27. The Applicants assert that a skilled artisan would understand these portions of the specification, and particularly the equations on page 10, lines 1-4, to define an "average rate of transmission" over the sum of the two intervals.

The Applicants assert that, in light of the above remarks, that the specification as filed supports the presently claimed subject matter and that the rejection of these claims under 35 U.S.C. §112, first paragraph, should be withdrawn.

Rejection under 35 U.S.C. §103(a) as being unpatentable over Welles in view of Yao

As noted above, the Examiner rejected claims 1, 3-4, 11, 13-14, 16, and 18 under 35 U.S.C. § 103(a) as being unpatentable over Welles, II et al (U. S. Patent No. 6,532,495) (hereinafter "Welles") in view of Yao et al. (U.S. Patent No. 6,532,495) (hereinafter Yao).[2] The Examiner further addressed the patentability of claims 2, 6, 7, 8, 9, 12 and 17 in light of these references as well. The Examiner recites 35 U.S.C. §103.

As an initial matter, the Applicants had submitted with their prior response an declaration under 37 CFR 1.131 to overcome Welles. The effective filing date of February 3, 2000 for the subject patent application is not more than one year from the filing date of the above referenced patent. The Examiner did not address this declaration in the Office Action dated March 22, 2005. The Applicants have attached a copy of this declaration to this response. Accordingly, it is respectfully submitted that the Welles reference should

[2] Applicants make no statement whether such combination is even proper.

be withdrawn and the rejection of claims 1, 3-4, 11, 13-14, 16, and 18, as well as claims 2, 6, 7, 8, 9, 12 and 17, under 35 U.S.C. §103(a) should also be withdrawn.

Although the Examiner indicates that Welles discloses the invention substantially as claimed, a determination of obviousness or non-obviousness, as expressly specified in the Statute cited by the Examiner, of the claimed subject matter requires giving full recognition to the claimed subject matter "as a whole." The Applicants assert that when considering these claims "as a whole," the cited prior art references do not teach or suggest the presently claimed invention.

To begin, the Applicants assert that there are substantial differences between the presently claimed invention and the Welles reference so as to preclude the Welles reference from being an sufficient teaching for aspects of the presently claimed invention as asserted by the Examiner. In particular, data download speeds in Welles are selected by a user instructing a server to use one specified download path that is selected from multiple download paths, where each download path has a different download speed capacity. The system of Welles varies download speed by selecting paths that each have different rate capacities. Welles, Abstract.

The Applicants assert that there is no teaching in the Welles reference of a speed indication signal as set forth in claim 1, which states "wherein the speed indication signal comprises an indicated speed of transmission of the specified data item." This is due to the fact that, as described above, Welles does not communicate "an indicated speed of transmission of the specified data item," but rather simply specifies which download path to use.

An analogy between the claimed invention and the Welles reference may help to visualize this distinction. The Welles reference can be analogized to varying the speed of a trip by commanding a driver to select a particular roadway to take to a destination, either a high speed super-highway or a slow speed city road. Under this analogy, the system of

Welles always travels at the maximum possible speed for the selected roadway. Under this same analogy, the presently claimed invention can be thought of as taking the same roadway regardless of the desired speed, except that the average speed actually traveled along that roadway is specified by the speed indication signal and the speed actually traveled is then varied in response to a indicated speed *so as to be limited to not be greater than the indicated speed.* The teachings of the Welles reference are analogous to specifying a roadway, the presently claimed invention is analogous to specifying a speed limit. The presently claimed invention in this analogy is able to use any roadway, and in fact even split data transmissions among multiple roadways. The Applicants assert that the teachings of Welles, which teach the equivalent of using route "A" or route "B," is not a teaching of the speed indication signal as is set forth in claims 1, 6 and 11. The Applicants therefore assert that this difference distinguishes the presently claimed invention from the cited prior art of record.

The Applicants further assert that the modification of Yao to the present invention is improper as it would yield an inoperable device. If references taken in combination would produce a "seemingly inoperative device," such references have been held to teach away from the combination and thus cannot serve as predicates for a *prima facie* case of obviousness. *In re Sponnoble*, 405 F.2d 578, 587, 160 USPQ 237, 244 (CCPA 1969) (references teach away from combination if combination produces seemingly inoperative device); see also *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984) (inoperable modification teaches away).

The Applicants point out that the teachings of Yao are limited to ensuring that data is transferred at a rate that is at least equal to a data rate of an entered real time stream data. Yao, column 4, lines 7-10 and column 4, lines 44-48. The "real time data streams" of Yao are transferred by using "a number of unit streams and a block transfer time for the real time data stream, according to a data rate of each real time stream data." Yao, column 2, lines 50-53. The Applicants assert that the focus of the Yao reference is

transferring real time data streams, which necessarily have to be transferred at the data rate that is associated with that real time data.

The Applicants assert that modification of Yao to accept such a "speed indication signal" with an indicated speed of transmission that is unrelated to the data rate of the real-time data being transferred, would result in an inoperable system. Limiting an average rate of transmission for a real-time data stream, such as that used by the Yao reference, causes the real-time data to not be delivered in the timeline required.

Even assuming, *arguendo*, that the teachings of Welles and Yao could be combined into an operable system, the Applicants respectfully assert that there is no motivation to combine the teachings of Welles and Yao. The Examiner correctly states that Welles "does not disclose the step of limiting an average rate of transmission of at least a portion of the data item across a data link to the requesting computer to be not greater than the indicated speed." Office Action dated March 22, 2005, page 4, last paragraph. The Examiner cites as motivation for combining the Welles and Yao references that "it would have been obvious ... to incorporate and implement the aforementioned steps of dividing or limiting the stream resources into amounts corresponding to the unit streams and allocate according to a data rate of each real time stream so that it becomes possible to utilize the stream resources efficiently without wasting resources." Office Action dated March 22, 2005, page 5, second paragraph. The Applicants fail to understand how that second statement relates to the "limiting an average rate of transmission" step of claim 1, and how this could be a teaching of that limitation, as is apparently asserted by the Examiner. The Applicants assert that there is no motivation in the prior art to combine a system that selects one of multiple download paths to select a 'high" and a "low" speed, with a real time data delivery system to produce a system that limits transmission speed based upon a speed indication signal comprising an indicated speed of transmission, as is recited for the presently claimed invention.

The Applicants further assert that the teachings of the Yao reference, which are directed to transferring real time data, are inconsistent with the presently claimed invention, which specifies that "the specified data item is to be delivered in its entirety prior to being accessed." The Applicants assert that the teachings of Yao, which are focused on real-time data delivery and ensuring that the data rate of the real-time data is maintained, is a teaching away of the presently claimed invention. The Yao reference teaches ensuring that the data rate of the real time data is maintained during transfer of that data. See, for example, Yao, column 10, lines 1-12. Ensuring that the data rate of a real time stream data is maintained teaches away from "receiving a speed indication signal" as is set forth in claim 1.

Based upon the above arguments, the Applicants assert that neither the Welles reference or the Yao reference, taken either alone or in any combination, teach, suggest or make obvious the claimed invention, taken as a whole, which includes:

> limiting an average rate of transmission of at least a portion of the specified data item across a data link to the requesting computer to be not greater than the indicated speed, wherein the indicated speed is less than the data rate of the data link and less than the data rate capacity of the requesting computer.

With regards to the Examiner's assertion that the well known ATM related "leaky bucket" or "Generic Cell Rate Algorithm" techniques are an adequate teaching of portions of claims 1, 6 and 11, the Applicants assert that these techniques are based on predetermined speed limitations, such as a maximum data rate for a particular node, and do not lend themselves to "limiting an average rate of transmission of at least a portion of the specified data item" as is set forth in claims 1, 6, and 11. Further, these techniques do not include receiving a speed indication signal from the questing node, as is recited for the presently claimed invention. These ATM techniques are used to limit the transmission rate from a node, and are not applied to individual data items as is the context of claims 1, 6, and 11 when those claims are considered "as a whole."

With regards to claims 2, 7 and 12, the Applicants traverse the Examiner's assertion that the combination of Welles and Yao discloses "determining a period based at least on the average transmission rate." Office Action dated March 22, 2005, page 5, paragraphs 3 and 4. The Examiner cites a limitation of claim 1 of Yao as a teaching of this limitation of the present invention. The Applicants are unsure if the Examiner is referring to the "block transfer period T" or the "block transfer time" that is discussed in the cited portion of Yao as being a disclosure of the "period" recited in claims 2, 7 and 12. The Applicants will address how both of these quantities cannot be a teaching of the period set forth in these claims.

The Applicants assert that the block transfer period T of Yao is limited to "a prescribed block transfer period T." Yao, column 12, lines 21-23 (emphasis added). The Applicants assert that a prescribed block transfer period cannot be a teaching of "determining a block size" as is set forth in claims 2, 7 and 12.

The Applicants point out that the "block transfer time" of Yao is determined "according to the number of unit streams to be used and the prescribed block transfer period T." Yao, column 12, lines 22-25. In fact, Yao defines the block transfer time to be the "block transfer period" (which is defined as being prescribed) divided by the number of unit streams. Yao, column 6, lines 11-18. The Block transfer time is also defined by Yao as time in which each data block is transmitted. Yao, column 6, lines 25-29. The Applicants assert that this time period in which the data blocks are transmitted is not a teaching of the "time period" set forth in claims 2, 7 and 12, which include "transmitting a plurality of blocks of data, each of the blocks having the block size and being transmitted at intervals substantially equal to the time period." The "block transfer time" of Yao is the time in which blocks are transferred, whereas the "time period" of claims 2, 7 and 12 is substantially equal to the period between block transmissions.

The Applicants traverse the Examiner's assertion with regards to claims 3 and 13. These claims set forth "accessing a remote computer indicated in an address included in

the request, wherein the remote computer is not one of the server and the requesting computer." The "request" of these claims are defined in the independent claims from which they depend as being received at a server. The Examiner cites a portion of Welles that discusses downloading data from a path that is specified by the user. The cited portion of Welles describes a computer downloading information from a "source address," which the Applicants submit is analogous to the server of claims 3 and 13. The Applicants fail to see where the cited prior art references teach or suggest "accessing a remote computer ... not one of the server and the requesting computer" as is set forth in claims 3 and 13.

With regards to claims 16-18, although the Examiner initially mentions Ravi, a portion of Yao is cited. The Applicants point out that the transmission rates for the "real time data stream" of Yao are necessarily set by the data rate of the real time data stream. See, Yao, column 4, lines 9-11. The Applicants fail to see where Yao discusses transferring anything other than real time data, and therefore must be limited to transferring data at a speed that is associated with the specified data item.

For at least the reasons discussed above, Applicants respectfully assert that claims 1-3, 6-8, 11-13 and 16-18 distinguish over the Welles and Yao references, taken either alone or in combination. In addition to the above, the Applicants further assert that dependent claims 2-4, 7-9, 12-14 and 16-18 depend from claims 1, 6 and 11, and further include all of the limitations of those claims. Therefore, Applicants respectfully submit that claims 1-4, 6-9, 11-14 and 16-18 all distinguish over Welles and Yao references for at the above reasons. The Applicants therefore assert that the rejection of claims 1-4, 6-9, 11-14 and 16-18 under 35 U.S.C. §103(a) over Welles in view of Yao is improper and should be withdrawn.

Rejection under 35 U.S.C. §103(a) as being unpatentable over Welles in view of Huizer

As noted above, the Examiner rejected claims 5, 10 and 15 under 35 U.S.C. § 103(a) as being unpatentable over Welles (U.S. Patent No. 6,532,495) (Hereinafter

Welles) in view of Huizer et al. (U.S. Patent No. 6,751,802) (Hereinafter Huizer).[3]. The Applicants had submitted an declaration under 37 CFR 1.131, and is resubmitting a copy of that declaration, herewith to overcome Welles. The effective filing date of February 3, 2000 for the subject patent application is not more than one year from the filing date of the above referenced patent. Accordingly, it is respectfully submitted that the rejection of claims 5, 10 and 15 under 35 U.S.C. §103(a) should be withdrawn.

The Applicants point out that the Examiner refers to "Gupta" in regards to some limitations of these claims. The Applicants assume that the cited reference portions are actually referring to Welles, as is the case for similar limitations discussed in this office action with regards to claims 1, 6 and 11.

With regards to the citations to Welles and Yao, the Applicants reassert their remarks above with regards to the similar limitations of claims 1, 6, and 11. With further regards to Yao, the Applicants point out that claims 5, 10 and 15 recite "generating a schedule for issuing pause transmission and resume transmission signals based on the user input speed setting..." and that the Yao reference contains no discussion or suggestion of such a schedule. At most, Yao teaches scheduling transmission of data packets, referred to as blocks, that carry the actual requested data. Yao does not teach or suggest a schedule for issuing any type of control data, such as the pause transmission and resume transmission signals set forth in these claims.

With regards to the citation of the Huizer reference, the Applicants respectfully traverse the Examiner's assertion that Huizer, even in combination with Welles and Yao, contains a sufficient teaching of "sending a sequence of pause transmission and resume transmission signals from the client computer to a server computer according to the schedule" as is set forth in the context of claims 5, 10 and 15. Although Huizer does teach sending pause and resume transmissions, there is no teaching or

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[3] Applicants make no statement whether such combination is even proper.

suggestion of sending these transmissions in any type of automated, let alone scheduled, manner. The Huizer reference is limited to sending pause and resume transmission in response to a human viewer's command. Huizer, column 2, lines 42-50. The Applicants further assert that the teachings of Yao are limited to periodic transmissions of data packets and that the Yao reference does not teach or suggest periodically sending anything other than the data being transferred. The Yao reference, either alone or in any combination with either or both of the Huizer or Welles reference, does not teach or suggest the periodic sending of any type of control signals, such as the pause transmission and resume transmission signals set forth in claims 5, 10 and 15.

Furthermore, the Huizer system performs complex processing after generation of the pause or resume transmission, which is inconsistent with limiting "an average transmission rate of transmission ... to be not greater than the user input speed." This processing is taught as being a necessary in response to properly accommodating the pause and resume signal transmissions of the Huizer system. The Applicants assert that incorporating pause and resume transmissions that require the involved processing taught by Huizer would render an inoperable system as the pause and resume processing would not finish prior to receipt of the next resume or pause signal in the case of short pauses in transmission.

CONCLUSIONS

In view of the foregoing, it is respectfully submitted that the application and the claims are in condition for allowance. Reexamination and reconsideration of the application, as amended, are requested.

PLEASE, if for any reason the Examiner finds the application other than in condition for allowance, the Examiner is invited to call either of the undersigned attorneys at (561) 989-9811 should the Examiner believe a telephone interview would advance the prosecution of the application.

Respectfully submitted,

Date: May 23, 2005

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Victor S. MOORE et al.
Serial No.: 09/497,836
Filed: February 3, 2000
For: USER INPUT BASED ALLOCATION OF BANDWIDTH ON A DATA LINK

Group Art Unit: 2153

Examiner: Kimberly D. Flynn

RESPONSE UNDER 37 C.F.R. § 1.111

VIA FACSIMILE FAX # (703) 872-9306
BOX AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
ATTN: Examiner Kimberly D. Flynn

Sir:

In response to the Office Action dated June 4, 2004, in connection with the above-identified application, please enter and reconsider the following remarks.

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, on 10/4/04
Date of Transmission

Karen Taraqowski
Applicant, Assignee, or Representative

Karen Taraqowski 10/4/04
Signature Date

CLAIMS

IN THE CLAIMS

1. (Currently Amended) A communication method for transmitting data from a server to a requesting computer, said method comprising steps of:

receiving a request for a specified data item at the server, the specified data item to be delivered in its entirety prior to being accessed;

receiving a speed indication signal at the server from the requesting computer, wherein the speed indication signal comprises an indicated speed of transmission of the specified data item; and

limiting an average rate of transmission of at least a portion of the specified data item across a data link to the requesting computer to be not greater than the indicated speed, wherein the indicated speed is less than the data rate of the data link and less than the data rate capacity of the requesting computer ~~server~~.

2. (Previously Presented) A communication method according to claim 1 in which the limiting step comprises substeps of:

determining a block size based at least on the average transmission rate;

determining a period based at least on the average transmission rate, wherein the period is longer than the period required to transmit the block size at the data rate of the data link; and

transmitting a plurality of blocks of data, each of the blocks having the block size and being transmitted at intervals substantially equal to the time period.

3. (Previously Presented) A communication method according to claim 1, further comprising steps of:

accessing a remote computer indicated in an address included in the request, wherein the remote computer is not one of the server and the requesting computer; and

receiving, at the server, the specified data item from the remote computer.

4. (Previously Presented) A communication method according to claim 1 further comprising steps of reading the specified data item from a memory associated with the server.

5. (Currently Amended) A communication method for transmitting data from a server to a requesting computer, said method comprising the steps of:

accepting a user request for a specified data item at a client computer, the specified data item to be delivered in its entirety prior to being accessed;

accepting a user input speed setting at the client computer;

generating a schedule for issuing pause transmission and resume transmission signals based on the user input speed setting, wherein the schedule limits an average transmission rate of transmission of at least a portion of the specified data item across a data link to the requesting computer to be not greater than the user input speed, wherein the user input speed is less than the data rate of the data link and the data rate capacity of the requesting computer ~~server~~;

transmitting the user request for a specified data item to a server computer; and

sending a sequence of pause transmission and resume transmission signals from the client computer to a server computer according to the schedule.

6. (Currently Amended) A communication system for transmitting data from a server to a requesting computer comprising:

a means for receiving a request for a specified data item at the server, the specified data item to be delivered in its entirety prior to being accessed;

a means for receiving a speed indication signal at the server from the requesting computer, wherein the speed indication signal comprises an indicated speed of transmission of the specified data item; and

a means for limiting an average rate of transmission of at least a portion of the specified data item across a data link to the requesting computer to be not greater than the indicated speed, wherein the indicated speed is less than the data rate of the data link and less than the data rate capacity of the requesting computer ~~server~~.

7. (Previously Presented) A communication system according to claim 6 in which the limiting means comprises:

a means for determining a block size based at least on, the average transmission rate;

a means for determining a period based at least on, the average transmission rate, wherein the period is longer than the period required to transmit the block size at the data rate of the data link;

a means for transmitting a plurality of blocks of data, each of the blocks having the block size and being transmitted at intervals substantially equal to the time period.

8. (Previously Presented) A communication system according to claim 6, further comprising:

a means for accessing a remote computer indicated in an address included in the request, wherein the remote computer is not one of the server and the requesting computer; and

a means for receiving, at the server, the first specified data item from the remote computer.

9. (Previously Presented) A communication system according to claim 6 further comprising means for reading the specified data item from a memory associated with the server computer.

10. (Currently Amended) A communication system for transmitting data from a server to a requesting computer comprising:

a means for accepting a user request for a specified data item at a client computer, the specified data item to be delivered in its entirety prior to being accessed;

a means for accepting a user input speed setting at the client computer;

a means for generating a schedule for issuing pause transmission and resume transmission signals based on the user input speed setting, wherein the schedule limits a transmission rate of transmission of at least a portion of the specified data item across

a data link to the requesting computer to be not greater than the user input speed, wherein the user input speed is less than the data rate of the data link and less than the data rate capacity of the requesting computer ~~server~~;

a means for transmitting the user request for a specified data item to a server computer; and

a means for sending a sequence of pause transmission and resume transmission signals from the client computer to a server computer according to the schedule.

11. (Currently Amended) A computer readable medium containing programming instructions for data communication comprising programming instructions for:

receiving a request for a specified data item at a server, the specified data item to be delivered in its entirety prior to being accessed;

receiving a speed indication signal at the server from a ~~the~~ requesting computer, wherein the speed indication signal comprises an indicated speed of transmission of the specified data item; and

limiting an average rate of transmission of at least a portion of the specified data item across a data link to the requesting computer to be not greater than the indicated speed, wherein the indicated speed is less than the data rate of the data link and the data rate capacity of the requesting computer ~~server~~.

12. (Previously Presented) The computer readable medium according to claim 11 wherein the programming instruction for limiting comprises programming instructions for:

determining a block size based on, at least, the average transmission rate;

determining a period based on, at least, the average transmission rate, wherein the period is longer than the period required to transmit the block size at the data rate of the data link; and

transmitting a plurality of blocks of data, each of the blocks having the block size and being transmitted at intervals substantially equal to the time period.

13. (Previously Presented) A computer readable medium according to claim 11, further comprising programming instructions for:

accessing a remote computer indicated in an address included in the request, wherein the remote computer is not one of the server and the requesting computer; and

receiving, at the server, the first specified data item from the remote computer.

14. (Previously Presented) A computer readable medium according to claim 11, further comprising programming instructions for reading the specified data item from a memory associated with the server computer.

15. (Currently Amended) A computer readable medium containing programming instructions for data communication comprising programming instructions for:

accepting a user request for a specified data item at a client computer, the specified data item to be delivered in its entirety prior to being accessed;

accepting a user input speed setting at the client computer;

generating a schedule for issuing pause transmission and resume transmission signals based on the user input speed setting, wherein the schedule limits a transmission rate of transmission of at least a portion of the specified data item across a data link to the requesting computer to be not greater than the user input speed, wherein the user input speed is less than the data rate of the data link and the data rate capacity of the client computer ~~server~~;

transmitting the user request for a specified data item to a server computer; and

sending a sequence of pause transmission and resume transmission signals from the client computer to a server computer according to the schedule.

16. (Previously Presented) The method according to claim 1, wherein the transmission rate is not related to a speed that is associated with the specified data item.

17. (Previously Presented) The communication system of claim 6, wherein the transmission rate is not related to a speed that is associated with the specified data item.

18. (Previously Presented) The computer readable medium according to claim 11, wherein the transmission rate is not related to a speed that is associated with the specified data item.

REMARKS

Applicants have studied the Office Action dated June 4, 2004. It is submitted that in view of the following remarks, the application is in condition for allowance. Claims 1-18 are pending. Claims 1, 5, 6, 10, 11, 15, have been amended. Reconsideration and further examination of the pending claims in view of the following remarks is respectfully requested. In the Office Action, the Examiner:

(2-3) Rejected claims 1, 3-4, 11, 13-14, 16, and 18 under 35 U.S.C. § 103(a) as being unpatentable over Welles, II et al (U.S. Patent No. 6,532,495) in view of Ravi (U.S. Patent No. 6,292,834).

(4) Rejected claims 5, 10 and 15 under 35 U.S.C. § 103(a) as being unpatentable over Gupta et al. (U. S. Patent No. 6,543,596) in view of Welles (U.S. Patent No. 6,532,495).

(5) Rejected claims 6, 8-9, and 17 under 35 U.S.C. § 103(a) as being unpatentable over Gupta et al. (U. S. Patent No. 6,543,596) in view of Welles, II et al (U.S. Patent No. 6,532,495) in further view of Ravi (U.S. Patent No. 6,292,834).

(6) Rejected claims 2 and 12 under 35 U.S.C. § 103(a) as being unpatentable over Welles, II et al (U.S. Patent No. 6,532,495) in view of Ravi (U.S. Patent No. 6,292,834) in further view of Birk et al. (U.S. Patent No. 6,502,139).

(7) Rejected claim 7 under 35 U.S.C. § 103(a) as being unpatentable over Gupta et al. (U. S. Patent No. 6,543,596) in view of Welles, II et al (U.S. Patent No. 6,532,495) in further view of Birk et al. (U.S. Patent No. 6,502,139).

The Applicants respectfully submit that the Examiner's rejection under 35 U.S.C. § 103 (a) have been overcome based on the following remarks.

Telephone Interview

Applicants wish to thank Examiner Flynn for holding a telephone interview on September 14, 2004 in regards to the subject office action. In that interview, representatives for the Applicants discussed the differences between the cited prior art and the claimed invention. In particular, differences between the cited prior art and aspects of the claimed invention in which an average rate of transmission of at least a portion of the specified data item is limited to be not greater than a speed that is specified by the requesting computer receiving the specified data item were discussed. In response to the Examiner's suggestion, Applicants are submitting these remarks.

In this telephone interview, the contrast of the claimed invention to the teachings of Ravi, where download speeds are controlled by selecting different streaming multimedia data objects based upon their transmission speed requirement, were discussed. Further discussed was the contrast of the claimed invention to teaching of Welles, where download speed is selected by selecting one of multiple download paths, where each of the multiple download paths has a different download speed capacity. The differences between these prior art references, and the presently claimed invention wherein download speed is controlled during the download process, were discussed in this telephone interview. The substance of this telephone interview are expanded upon in the following remarks.

An analogy between the claimed invention and the Welles reference may help to visualize this distinction. The Welles reference can be analogized to varying the speed of a trip by selecting which roadway to take to a destination, either a high speed super-highway or a slow speed city road. Under this analogy, the system of Welles always travels at the maximum possible speed for the selected roadway. Under this same analogy, the presently claimed invention can be thought of as taking the same roadway regardless of the desired speed, except that the speed actually traveled along that roadway is varied in response to a indicated speed. Applicants assert that this difference distinguishes the presently claimed invention from the cited prior art of record.

Overview of the Present Invention

The present invention is directed to a method and system for limiting the usage of data communications bandwidth when transferring a specified data item across a data link, wherein the specified data item is delivered in its entirety prior to being accessed. The present invention is not related to the delivery of "streaming" multimedia, but rather to the delivery of digital content in its entirety prior to its being accessed. In one aspect of the present invention, data is transmitted by receiving a request for a specified data item at a server and by receiving a speed indication signal at the server from the requesting computer. The speed indication signal comprises an indicated speed of transmission. The operation of the present invention then operates by limiting an average rate of transmission of at least a portion of the specified data item across a data link to the requesting computer to be not greater than the indicated speed, wherein the indicated speed is less than the data rate of the data link and the data rate capacity of the requesting computer.

Claim Amendments

Applicants have amended independent claims 1, 5, 6, 10, 11, and 15 to clarify that the indicated speed is, *inter alia*, less than the data rate capacity of the requesting (or client) computer. Support for this amendment is found in the specification at, for example, page 9, lines 7-10. Claim 11 was further amended to provide proper antecedent basis. No new matter was added by these amendments.

Rejection under 35 U.S.C. §103(a) as being unpatentable over Welles in view of Ravi

As noted above, the Examiner rejected claims 1, 3-4, 11, 13-14, 16, and 18 under 35 U.S.C. § 103(a) as being unpatentable over Welles, II et al (U. S. Patent No. 6,532,495) (hereinafter "Welles") in view of Ravi et al. (U.S. Patent No. 6,292,834) (hereinafter Ravi).[1] The Examiner recites 35 U.S.C. §103. The Applicants have submitted an affidavit under 37 CFR 1.131 herewith to overcome Welles. The effective filing date of February 3, 2000 for the subject patent application is not more than one year from the filing date of the above

[1] Applicants make no statement whether such combination is even proper.

referenced patent. Accordingly, it is respectfully submitted that the rejection of claims 1, 3-4, 11, 13-14, 16, and 18 under 35 U.S.C. §103(a) should be withdrawn.

Although the Examiner indicates that Welles discloses the invention substantially as claimed, a determination of obviousness or non-obviousness, as expressly specified in the Statute cited by the Examiner, of the claimed subject matter requires giving full recognition to the claimed subject matter "as a whole."

To begin, the Welles disclosure is directed to a system for downloading a file over multiple data download paths that each have a different data rate capacity. The system of Welles varies download speed by selecting paths with different rate capacities. Welles, Abstract. There is no teaching in the Welles reference of "limiting an average rate of transmission ... to be not greater than the indicated speed, wherein the indicated speed is less than the data rate of the data link" as is recited for the independent claims of the present invention.

Applicants respectfully assert that the selection of a download path with a high or low data rate capacity is further not a teaching of "limiting an average rate of transmission ... to be not greater than the indicated speed" as is recited by the independent claims of the present invention. The teachings of Welles do not include a limiting step, only a selection step of selecting a download path with a high or low bandwidth, and then using that download path without any speed limitations.

The Ravi reference is directed to adjusting multimedia stream transmission rates so as to match the available capacity of either the communications link or the available processing power of the receiving node. The transmission rate is adjusted in response to "Decrease Bandwidth" (DEC_BW) message or a converse "Increase Bandwidth" message. The receiving node provides these increase or decrease bandwidth messages as feedback from the receiving node to the transmitting node. These bandwidth messages are based upon excesses or deficiencies in the speed of either (i) processing or (ii) communications

as observed at the receiving node. Ravi, Abstract, FIG. 11. The "Increase Bandwidth" or "Decrease Bandwidth" messages are not taught to include an "indicated speed," but rather they convey only an "increase" or "decrease" instruction.

By way of analogy, a data transmission rate can be analogized to an audible volume control on a television. The "decrease bandwidth" and "increase bandwidth" messages of the Ravi disclosure are similar to "Volume Up" and "Volume Down" controls commonly found on a television. In contrast, the "indicated speed of transmission" as claimed by the present invention is analogous to specifying that the volume control is to be set to a value of 25% of total audio output.

The only teaching in the Ravi reference for adjusting the transmission rate for a multimedia stream, which is the only data item taught to be transmitted in the Ravi reference, is to select video streams that present different "frames per second" (fps). Examples are given for "5 fps, 10 fps and 15 fps for bandwidths of 4 kbits/second (kbps), 14 kbsp, 18 kbps, and 44 kbps." Ravi, column 6, lines 44-47. This is consistent with streaming multimedia since the data must be delivered in "real time" in order to be continuously presented to the viewer. The "Background of the Invention" section of Ravi discusses this problem. Ravi, Col. 2, lines 20-34. The invention of Ravi solves this problem by selecting files with differing bandwidth requirements. Ravi, col. 6, lines 32-47.

As discussed in the above reference telephone interview on September 14, 2004, Applicants assert that selecting of one file from several that each have different bandwidth requirements, such as selection of streaming multimedia files that have different frame per second rates, is not a teaching of "limiting an average rate of transmission ... to be not greater than the indicated speed" as is recited for the independent claims of the present invention. Applicants respectfully assert that the Ravi reference is simply selecting data objects so as to match the available bandwidth.

Applicants further point out that independent claims 1, and 11 also specify that "the specified data item to be delivered in its entirety prior to being accessed[.]" Examples of this type of transfer are described in the specification as File Transfer Protocol (FTP) requests. See, Specification, page 4, lines 23-25. FTP file transfers, where the entire data object is transferred prior to being accessed by the receiving computer, are clearly distinguished from the "streaming multimedia data streams" taught by the Ravi reference. The Gupta reference, cited by the Examiner in rejections discussed below, teaches, "'streaming' is used to indicate that the data representing the various media types is provided ... on a realtime, as-needed bases, rather then being pre-delivered in its entirety before playback." Welles, Column 1, lines 30-34. Ravi is similarly restricted to streaming multi-media. Ravi, Column 3, lines 2-5.

Applicants further assert that neither the Welles reference or the Ravi reference, taken either alone or in combination, teach, suggest or make obvious the claimed invention, taken as a whole, which includes:

> limiting an average rate of transmission of at least a portion of the specified data item across a data link to the requesting computer to be not greater than the indicated speed, wherein the indicated speed is less than the data rate of the data link and less than the data rate capacity of the requesting computer.

The Examiner correctly states that the Welles reference does not teach the above element. Applicants respectfully traverse the Examiner's assertion that application of the Ravi reference to the Welles reference would teach, suggest or make obvious the claimed invention "as a whole." Neither the Welles reference or the Ravi reference teach limiting an average rate of transmission of at least a portion of the specified data item ... to be not greater than an indicated speed wherein the indicated speed is less than the data rate of the data link and less than the data rate capacity of the receiving computer as is claimed for the present invention. As discussed above, Ravi teaches selection of one of a plurality data items, i.e., composite data streams, to vary "speed."

Applicants assert that the Ravi reference only teaches transmission of a message to "increase bandwidth" or "decrease bandwidth" messages from the client to the server. The present invention provides a large variety and hence greater granularity than the message to increase or decrease bandwidth. In further contrast to the Ravi reference, the present invention allows direct specification of the average transmission rate, by receiving a speed indication signal at the server from the requesting computer, wherein the speed indication signal comprises an indicated speed of transmission of the specified data item.

With regards to claims 16 and 18, Applicants further assert that these claims further distinguish over the cited references since these claims further specify that "the transmission rate is not related to a speed that is associated with the specified data item." This is in clear contrast to the teachings of Ravi, which selects a streaming multimedia data object with an associated speed, such as frames per second, to match the desired bandwidth.

For at least the reasons discussed above, Applicants respectfully assert that independent claims 1, and 11 distinguish over the Welles and Ravi references, taken either alone or in combination, and that the rejection of these claims under 35 U.S.C. §103(a) should be withdrawn. Applicants further assert that dependent claims 3, 4 and 16 and 13, 14 and 18 depend from claims 1 and 11, respectively, and further include all of the limitations of those claims. Therefore, Applicants respectfully submit that claims 3, 4, 13, 14, 16 and 18 similarly distinguish over Welles and Ravi for at least those reasons, and that the rejection of these dependent claims should also be withdrawn.

Rejection under 35 U.S.C. §103(a) as being unpatentable over Gupta in view of Welles

As noted above, the Examiner rejected claims 5, 10 and 15 under 35 U.S.C. § 103(a) as being unpatentable over Gupta et al. (U. S. Patent No. 6,543,596) in view of Welles (U.S. Patent No. 6,532,495). The Applicants have submitted an affidavit under 37 CFR 1.131 herewith to overcome Welles. The effective filing date of February 3, 2000 for the subject patent application is not more than one year from the filing date of

the above referenced patent. Accordingly, it is respectfully submitted that the rejection of claims 1, 3-4, 11, 13-14, 16, and 18 under 35 U.S.C. §103(a) should be withdrawn.

Further, the disclosure of Gupta is directed towards a streaming multimedia player that is able to change video or audio playback speeds by selecting different media streams that are all previously stored on a server. Gupta, Abstract, Column 6, lines 57-65. Gupta defines the term "streaming" at column 1, lines 30-34 as follows: (emphasis added)

> The term "streaming" is used to indicate that the data representing the various media types is provided over a network to a client computer on a realtime, as-needed basis rather than being pre-delivered in its entirety before playback.

The focus of the Gupta disclosure is on techniques for selecting a point within the different media stream that corresponds to the currently displayed point of a currently viewed media stream. Gupta, column 9, lines 5-17; column 10, lines 31-39. The user of the Gupta invention selects a time altered media stream, such as a multi-media segment that contains a fast forward version of a primary media stream. Gupta, column 8, lines 51-64.

Applicants further respectfully assert that the Gupta reference, which are concerned solely with the distribution of streaming multimedia, teach away from the delivery of a specified data item to be delivered in its entirely prior to being accessed, as is recited by amended independent claims 1, 6 and 11. Prior art that teaches away is a *per se* demonstration of lack of *prima facie* obviousness.[2]

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[2] See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Moreover, the Gupta reference is directed to the selection of different data items based upon the playback speed selected by a user. No determination, processing associated with, or direct limitation of transmission rates across the data link is mentioned in the Gupta reference. The intent, purpose and function of the Gupta reference is the selection of data files or data items which contain streaming media that plays back at different speeds and the determination of the proper starting point within that file for a desired playback experience. The user of the Gupta system does not provide a "speed indication signal" that comprises "an indicated speed of transmission" and thereby explicitly "limits an average rate of transmission," as is set forth in the claims of the present invention. Applicants respectfully reassert from their earlier response that a modification of the Gupta reference to the purposes of the present invention destroys the intent, purpose and function of the Gupta invention. The Federal Circuit has consistently held that when a §103 rejection is based upon a modification of a reference that destroys the intent, purpose or function of the invention disclosed in the reference, such as proposed modification is not proper and the *prima facie* case of obviousness can not be properly made. See In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

With regards to claims 5, 10 and 15, Applicants respectfully assert that neither the Gupta reference or the Welles reference, taken either alone or in combination with each other, teach the claimed invention "as a whole," particularly the elements of:

> generating a schedule for issuing pause transmission and resume transmission signals based on the user input speed setting, wherein the schedule limits a transmission rate of transmission of at least a portion of the specified data item across a data link to the requesting computer to be not greater than the user input speed, wherein the input speed is less than the data rate of the data link and the data rate capacity of the requesting computer;

transmitting the user request for a specified data item to a server computer; and

sending a sequence of pause transmission and resume transmission signals from the client computer to a server computer according to the schedule.

With regards to the elements of claims 5, 10, and 15, Applicants are unable to identify in either the Gupta or Welles references any teaching of the following:

(A) "Generating a schedule for issuing pause transmission and resume transmission signals...."

A text search of both the Gupta and Welles references fails to find the word "schedule." The cited portions of Gupta discuss time compression and expansion for composite media streams. Gupta, column 6, lines 42-47. There is simply no teaching of "generating a schedule for issuing pause transmission and resume transmission signals..." as is claimed by dependent claims 5, 10 and 15.

Applicants respectfully assert that neither the Gupta or Welles references, taken alone or in combination with one another, teach, suggest or make obvious "generating a schedule" or issuing "pause transmission and resume transmission signals" as is specified by this element of claims 5, 10 and 15.

(B) "sending a sequence of pause transmission and resume transmission signals from the client computer to the server computer according to the schedule"

Applicants further respectfully assert that the "'pause removal' type of time compression" that was referred to in the passage cited by the Examiner, in Gupta in Column 7, lines 63 through Column 8, line 5, is not related to the "pause transmission"

and the "resume transmission" as is claimed for the present invention. The Gupta reference teaches a type of "pause removal" whereby pauses within speech or other sounds are removed from the audio stream in order to reduce the amount of time a particular audio passage takes to play. Applicants assert that this is completely unrelated to transmitting pause and resume transmissions as is claimed for the present invention. Applicants further respectfully assert that cited references, especially the cited portions of the Gupta reference, do not even mention sending a sequence of pause transmission and resume transmission signals from the client computer to the server computer according to the schedule, as is claimed for an aspect of the present invention.

Therefore, Applicants respectfully assert that the Gupta and Welles references, taken either alone or in combination with each other, fail to teach, suggest or make obvious the claimed invention "as a whole," as is claimed by claims 5, 10 and 15. For at least the reasons discussed above, Applicants respectfully assert that claims 5, 10 and 15 distinguish over the Gupta and Welles references, taken either alone or in combination, and that the rejection of these claims under 35 U.S.C. §103(a) should be withdrawn.

Rejection under 35 U.S.C. §103(a) as being unpatentable over Gupta in view of Welles in further view of Ravi

As noted above, the Examiner rejected claims 6, 8-9, and 17 under 35 U.S.C. § 103(a) as being unpatentable over Gupta et al. (U. S. Patent No. 6,543,596) in view of Welles, II et al (U.S. Patent No. 6,532,495) in further view of Ravi (U.S. Patent No. 6,292,834). The Applicants have submitted an affidavit under 37 CFR 1.131 herewith to overcome Welles. The effective filing date of February 3, 2000 for the subject patent application is not more than one year from the filing date of the above referenced patent. Accordingly, it is respectfully submitted that the rejection of claims 6, 8-9, and 17 under 35 U.S.C. §103(a) should be withdrawn.

As discussed above, Applicants assert that the Ravi reference does not teach "limiting an average rate of transmission..." as is claimed by independent claim 6. As further discussed above, Applicants assert that Gupta and Welles similarly do not teach this limitation and the combination of these references is improper and do not anticipate or render obvious the invention claimed by independent claim 6. Applicants further assert that these references do not teach the limitation of claim 17, which recites that "the transmission rate is not related to a speed that is associated with the specified data item."

Furthermore, Applicants note that claims 8-9 and 17 depend from independent claim 6 and include all of the limitations of that independent claim. As discussed above, claim 6 distinguishes over the cited prior art of record, and therefore claims 8-9 and 17 also distinguish over the prior art of record for at least those reasons.

Rejection under 35 U.S.C. §103(a) as being unpatentable over Welles in further view of Ravi in further view of Birk

As noted above, the Examiner rejected claims 2 and 12 under 35 U.S.C. § 103(a) as being unpatentable over Welles, II et al (U.S. Patent No. 6,532,495) in view of Ravi (U.S. Patent No. 6,292,834) in further view of Birk et al. (U.S. Patent No. 6,502,139). The Applicants have submitted an affidavit under 37 CFR 1.131 herewith to overcome Welles. The effective filing date of February 3, 2000 for the subject patent application is not more than one year from the filing date of the above referenced patent. Accordingly, it is respectfully submitted that the rejection of claims 2 and 12 under 35 U.S.C. §103(a) should be withdrawn.

Furthermore, Applicants note that claims 2 and 12 depend from claims 1 and 11, respectively, and include all of the limitations of those independent claims. As discussed above, claims 1 and 11 distinguish over the cited prior art of record, and therefore claims 2 and 12 also distinguish over the prior art of record for at least those reasons.

Rejection under 35 U.S.C. §103(a) as being unpatentable over Gupta in further view of Welles in further view of Birk

As noted above, the Examiner rejected claim 7 under 35 U.S.C. § 103(a) as being unpatentable over Gupta et al. (U. S. Patent No. 6,543,596) in view of Welles, II et al (U.S. Patent No. 6,532,495) in further view of Birk et al. (U.S. Patent No. 6,502,139). The Applicants have submitted an affidavit under 37 CFR 1.131 herewith to overcome Welles. The effective filing date of February 3, 2000 for the subject patent application is not more than one year from the filing date of the above referenced patent. Accordingly, it is respectfully submitted that the rejection of claim 7 under 35 U.S.C. §103(a) should be withdrawn.

As discussed above, independent claims 1, 5, 6, 10, 12 and 13 distinguish over the Gupta and Ravi references. Furthermore, dependent claims 2-4, 16; 7-9, 17 and 12-15, 18 depend from claims 1, 6 and 11, respectively, and contain all of the limitations of those claims. Therefore, dependent claims 2-4, 16; 7-9, 17 and 12-15, 18 distinguish over the Gupta and Ravi references for at least the same reasons, and therefore the rejection of these claims under 35 U.S.C. §103(a) should also be withdrawn.

CONCLUSIONS

In view of the foregoing, it is respectfully submitted that the application and the claims are in condition for allowance. Reexamination and reconsideration of the application, as amended, are requested.

PLEASE, if for any reason the Examiner finds the application other than in condition for allowance, the Examiner is invited to call either of the undersigned attorneys at (561) 989-9811 should the Examiner believe a telephone interview would advance the prosecution of the application.

Respectfully submitted,

Date: October 4, 2004

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